

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NATHANIEL OYOYO, JR.,

Plaintiff,

**NOTICE OF REMOVAL OF
ACTION (28 U.S.C. §1441(b))
Federal Question**

v.

Civil Action No.

COUNTY OF ERIE, DANIEL PIWOWARCZYK,
and John Does 1-17,

Defendants.

TO THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§1331, 1367, 1441 (a), (c), and 1446, defendant, COUNTY OF ERIE, hereby removes to this Court the civil action filed in the Supreme Court of the State of New York, County of Erie, as described below.

On March 23, 2023, Claimant, NATHANIEL OYOYO, JR., filed a Petition to serve a late notice of claim on Respondents COUNTY OF ERIE and Erie County Sheriff's Department in the Supreme Court for the State of New York, County of Erie under Index Number 803880/2023. **Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E.** The Petition was served on Respondents on April 6, 2023. **Exhibit F.** Respondents filed and served their Affirmation in Opposition to Petition on May 2, 2023. **Exhibit G, Exhibit H.** Hon. Kelly Vacco, the Supreme Court Justice to whom the case was initially assigned, recused herself from the case at the motion appearance on May 9, 2023. **Exhibit I.** Thereafter, oral argument on the Petition was held on July 11, 2023 before Hon. Amy Martoche, Supreme Court Justice, who issued an Order granting Petitioner leave to serve a late notice of claim as to Respondent COUNTY OF ERIE

and denying Petitioner leave to serve a late notice of claim as to Respondent Erie County Sheriff's Office. **Exhibit J, Exhibit K, Exhibit L.**

On September 15, 2023, Plaintiff, NATHANIEL OYOYO, JR., filed a civil action entitled "NATHANIEL OYOYO, JR. v. COUNTY OF ERIE, DANIEL PIWOWARCZYK and John Does 1-7," in the Supreme Court for the State of New York, County of Erie under Index Number 803880/2023, the same index number assigned to the aforementioned special proceeding. **Exhibit M, Exhibit N.** Plaintiff served the Summons and Complaint on Defendant, COUNTY OF ERIE, on October 4, 2023. **Exhibit O.** On October 24, 2023, Defendant COUNTY OF ERIE filed and served an Answer. **Exhibit P, Exhibit Q.** Upon information and belief, Plaintiff has not yet served the Summons and Complaint on Defendant, DANIEL PIWOWARCZYK.

No further proceedings have been had in the state court action. Plaintiff's Complaint contains a cause of action pursuant to 42 U.S.C. § 1983. Plaintiff's Complaint further alleges that Defendants violated the Plaintiff's constitutional right to be secure against unreasonable seizures of their person and that Defendants subjected Plaintiff to unreasonable and excessive force.

Upon information and belief, the co-defendant has not been served and upon further information and belief, the co-defendant would consent to removal.

Accordingly, this Court has original jurisdiction over the state court action under 28 U.S.C. §1331 (federal question) because it is a civil action that arises under the Constitution, laws, or treaties of the United States.

No previous application has been made for the relief requested herein.

Dated: Buffalo, New York
November 2, 2023

Yours, etc.

JEREMY C. TOTH, Erie County Attorney and
Attorney for Defendant
COUNTY OF ERIE

/s/ Amanda M. Somma

Assistant County Attorney, of Counsel
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NATHANIEL OYOYO, JR.,

Plaintiff

Civil Action No.

v.

COUNTY OF ERIE, DANIEL PIWOWARCZYK,
and John Does, 1-17,

Defendants.

**INDEX OF DOCUMENTS FILED OR SERVED IN STATE COURT ACTION PRIOR
TO REMOVAL**

Notice of Petition.....	Exhibit A
Petition.....	Exhibit B
Exhibit A to Petition (Affidavit).....	Exhibit C
Exhibit B to Petition (Proposed Notice of Claim).....	Exhibit D
Request for Judicial Intervention.....	Exhibit E
Affidavits of Service of Notice of Petition, Petition, and Exhibits.....	Exhibit F
Affirmation in Opposition to Petition.....	Exhibit G
Affidavit of Service of Affirmation in Opposition to Petition	Exhibit H
Notice of Recusal.....	Exhibit I
Proposed Order.....	Exhibit J
Order.....	Exhibit K
Notice of Entry.....	Exhibit L
Summons and Complaint.....	Exhibit M

Exhibit A to Summons and Complaint.....	Exhibit N
Affidavit of Service and Amended Affidavit of Service of Summons and Complaint on Defendant County of Erie.....	Exhibit O
Answer of Defendant County of Erie.....	Exhibit P
Affidavit of Service of Answer.....	Exhibit Q

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2023, a Notice of Removal of Action was filed with the Clerk of the Court and sent via U.S. mail, postage prepaid to:

Alexandria Awad, Esq.
TIVERON LAW, PLLC
Attorneys for Plaintiff
2410 North Forest Road, Suite 301
Amherst, New York 14068

Dated: Buffalo, New York
November 2, 2023

JEREMY C. TOTH, ESQ.
Erie County Attorney
and Attorney for Defendant
COUNTY OF ERIE

By: s/Amanda M. Somma
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